

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

NO. 4:07CR00092 JLH

ALLEN POLK

DEFENDANT

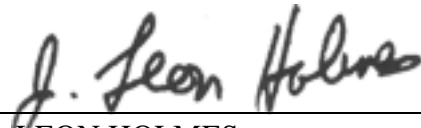
ORDER

Allen Polk has filed a motion to dismiss the § 924(e) enhancement alleged in the indictment on the ground that one of the three convictions alleged is not a violent felony or serious drug offense and therefore the indictment fails to allege sufficiently the requirements for an enhancement under 18 U.S.C. § 924(e). The Eighth Circuit has held that allegations of sentence enhancements such as § 924(e) are mere surplusage in an indictment and may be disregarded if the indictment is otherwise sufficient to charge a crime. *United States v. Bates*, 77 F.3d 1101, 1105 (8th Cir. 1996). Because those allegations are mere surplusage, they may be stricken so as not to cause unfair prejudice at trial. *United States v. Valencia-Meraz*, No. CRIM 06-82, 2006 WL 1704302, at *26 (D. Minn. May 10, 2006); *United States v. Mutchler*, 333 F. Supp. 2d 828, 832-33 (S.D. Iowa 2004). *Cf. United States v. Washington*, 992 F.2d 785, 788 (8th Cir. 1993). The enhancement provided in 18 U.S.C. § 924(e) is a sentence enhancement, not an element of the crime charged, and must be imposed, if applicable, when the defendant is found guilty whether or not the indictment mentions the enhancement. *United States v. Campbell*, 270 F.3d 702, 706-09 (8th Cir. 2001).

Because the enhancement provided in § 924(e) applies whether or not it is alleged in the indictment, the Court cannot dismiss the enhancement with prejudice as requested by Polk's motion.

However, if Polk wishes for the Court to strike those allegations as surplusage so as not to cause unfair prejudice at trial, the Court will do so. The motion to dismiss is denied. Document #23.

IT IS SO ORDERED this 21st day of July, 2008.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE